Lorillard

ARTHUR J. STEVENS
SENIOR VICE PRESIDENT-GENERAL COUNSEL
(212) 841-8708

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VIA TELECOPIER

Todd Sollis, Esq.
Philip Morris Companies, Inc.
120 Park Avenue
New York, NY 10017

Robert H. Sachs, Esq.
B&W Tobacco Corp.
1500 B&W Tower
Louisville Galleria
Louisville, KY 40232

Allen R. Purvis, Esq.
Shook, Hardy & Bacon
1101 Walnut
Kansas City, MO 64106

Josiah S. Murray, Esq.
Liggett & Myers Tobacco Co.
West Main & Fuller Streets
Durham, NC 27702

George D. Newton, Esq.
RJR Nabisco Inc.
1100 Reynolds Blvd.
Winston-Salem, NC 27102

Gentlemen:

Litigation Public Relations

It having been decided that Burson-Marsteller is to be engaged for Philip Morris, R.J. Reynolds, Brown & Williamson, and Lorillard, I believe it would be appropriate at the earliest to introduce them to the relevant particulars of the Industry and its litigation. Ellen Harrow and I will meet with Jim Lindheim to begin that process on July 24. Having then been educated to some degree, they will be instructed to produce for us a strategy and implementation plan which will set forth with particularity desirable objectives, how they are to be sought, by whom in the firm, with whom in the media and elsewhere, on what schedule and at what estimated cost. We will also review with Lindheim how Burson-Marsteller is to be paid.

I plan to advise them in advance that the presentation to us of vague goals concerning goodwill, couched in public relation jargon or the cliche of newspaperese, are neither acceptable nor useful. The only product we are buying is extended, informed and professional thought, offered in systematic, organized, literate and effective form. Each initiative, phrase and word must be analyzed and weighed for its persuasive value and implications for every aspect of Industry concern: the public at large (and those of them who may sit on juries or influence their legislators), judges, and plaintiffs' lawyers.

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Source: https://www.industrydocuments.ucsf.edu/docs/jrnv0003

Jim Lindheim is planning, at our invitation, to be in Dallas for the activities of Thursday, Friday and Saturday. Perhaps Allen Purvis might ponder some material for Lindheim and others at Burson-Marsteller to review beforehand which would advise on essential Industry themes and issues (legislative and legal).

Their further schooling may then, in addition perhaps to consultation with Allen Purvis and Chuck Wall, depend upon material already produced for public relations purposes and a spare compendium of representative press clippings and television tapes. I know that Shook Hardy has a good file of proposed releases for various litigation events, and that RJR has some excellent and comprehensive notebooks on public relations matters.

We have a two volume series used by us to initiate lawyers which contains a Maxwell Report which describes the cigarette companies, their size and products; a memo which sets forth cigarette brand history; copies of the 1965 and 1969 Cigarette Labelling Acts, and a copy of the 1973 amendment to the '69 Act; the tar and nicotine disclosure agreement with the Federal Trade Commission; the 1972 Federal Trade Commission Consent Order requiring the use of the warning notice in advertising; the 1984 Act; a memo describing The Tobacco Institute, the Council for Tobacco Research and some few other industry trade associations in addition to The Tobacco Institute; the Shook Hardy summary of the history and results of health litigation; a chronology of major events in the smoking and health controversy; a memo on the principal allegations in current cigarette litigation; a memo on plaintiffs' discovery in the cigarette cases; a memo on principal defenses in cigarette litigation; an 86 page Shook Hardy/Arnold & Porter memo on defendants' strategy; an August 10, 1985 Jones Day memo on tactical proposals in the smoking and health litigation; an August 10, 1985 Chadbourne & Parke memo on defendants' theories; a memo on defendants' investigations in preparation of the defense in smoking and health cases; a memo on jury research; a memo on the science in smoking and health cases; and, a memo on STIC work and STIC witnesses.

I am asking Allen Purvis to ponder material which will effectively inform on preemption, protective order decisions, and other signal pending matters in these areas, and in addition the results in Galbraith, Roysdon and Marsee.

We also have some specific ideas on objectives which are set forth on an attachment to this letter, and we seek your ideas on objectives and your specific thoughts on training materials. Please let us have such materials by July 31!

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Public Relations Objectives

Issues such as preemption and defense litigation tactics (discussed in the WSJ article of 4/29/87) have to be addressed in an aggressive and forthright manner. It is also critical that we break away from the defensive and apologetic phraseology we have heretofore adopted.

Specifically on the preemption question, our press releases must confirm the propriety of decisions upholding preemption and explain to prospective jurors and newspaper reporters as well as judges and plaintiffs' counsel that such decisions are absolutely consistant with Congress's intent to have a single and uniform warning system. Further, we must inform the public that preemption is not a trick which we have devised to avoid liability and that it addresses only limited elements of a personal injury suit, pursuant to the prescriptives of Congress. Similarly adverse decisions on preemption should be characterized as challenging Congressional authority and frustrating Congressional intent as well as being inconsistent with the weight of authority.

On the issue of the industry's approach to litigation, we must also put forth a clear and convincing statement; one which places the blame more appropriately on those who freely chose to use our products, and who then seek monetary compensation for a variety of diseases which they attribute primarily or solely to the use of tobacco. "Talking papers," press releases, and the like must emphasize the fact that the causes of cancer are not known; that there are an unlimited number of substances or events which may contribute to a person's chances of getting cancer; and that our discovery procedures are necessary and appropriate in trying to identify all of these potential disease-causing factors. Moreover, while such discovery is expensive, time consuming, inconvenient, and perhaps embarrassing to the plaintiffs in this litigation, these parties have chosen to sue and in doing so must be prepared to substantiate their allegations. As the parties defending these lawsuits, we too have been inconvenienced by being required to produce tens of millions of documents of little or no relevance to the causes of actions, and by having to produce corporate personnel to testify in innumerable depositions year in and year out. That this type of defense requires enormous expenditures and teams of lawyers is neither surprising nor unusual though it is certainly not our preference to be so involved.

Lastly, and throughout all of our public relations efforts, we must continue to talk about personal responsibility and the blatant impropriety which arises when a person who freely choses to use a legally manufactured product bearing a federally mandated warning, brings a suit disclaiming all responsibility for that choice. That juries and the public find so as well is worth emphasizing.

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We must presently consider the "melding" of Edelman and Burson-Marsteller. Our present thoughts are as follows: Scanlon must remain the exclusive operative for the Cipollone trial. His diminished role in the future must await the development of Burson-Marsteller and our acceptance of their proposals, but generally we see a broad, strategic planning and writing role for Burson-Marsteller, while Edelman, at most, would have some quite reduced function in the nature of press agent.

I have already advised Lindheim that discretion by Burson-Marsteller is of the essence and they are not to announce or otherwise allow to be published or known (generally or to Edelman) that they are acting for us. That may have to change, but I see no purpose in them disclosing themselves at this time as our agents. I have also told them that they are being hired, not by any company, but by litigating counsel and that they have a dual reporting responsibility.

Joe Murray will advise me as soon as possible whether Liggett will participate. If they do not, he assures me that Alan Hilburg will coordinate fully with Burson-Marsteller.

I need your response and suggestions, and believe that we ought to get Burson-Marsteller coached and humming well before the Horton and Cipollone trials are upon us.

If you have any questions before Friday of this week, please call Ellen Harrow (212/841-8951).

Regards and Best Wishes,

Arthur J. Stevens

AJS:pd
Attachment

cc: J.R. Cherry, Esq.
E.A. Harrow, Esq.

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